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## DECISION

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11 December 2013

### 1. Summary

Substance Name	Tui Targeted Hydrocotyle Weed Eliminator for Lawns
Application code	APP201974
Application type	To import or manufacture for release any hazardous substance under Section 28 of the Hazardous Substances and New Organisms Act 1996 ("the Act")
Application sub-type	Section 28A(2)(c) – rapid reduced hazard – formulated so that one or more hazardous properties has a lesser degree of hazard than a substance that has been approved under the Act
Applicant	Tui Products Ltd
Purpose of the application	To manufacture Tui Targeted Hydrocotyle Weed Eliminator for Lawns containing 120 g/L triclopyr as the butoxyether ester as a herbicide for use in the home garden
Date application received	28 November 2013
Consideration date	12 December 2013
Considered by	The Chief Executive <sup>1</sup> of the Environmental Protection Authority ("the EPA")
Decision	<b>Approved with controls</b>
Approval code	<b>HSR100902</b>
Hazard classifications (refer to Table 1)	6.1E, 6.4A, 6.5B, 6.9B, 9.1A, 9.2A

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<sup>1</sup> The Chief Executive of the EPA has made the decision on this application under delegated authority in accordance with section 19 of the Act

## 2. Background

- 2.1. Tui Targeted Hydrocotyle Weed Eliminator for Lawns is an emulsifiable concentrate containing 120 g/L of triclopyr as the butoxyethyl ester, and other components. It is intended for use as a herbicide in the home garden.
- 2.2. Tui Targeted Hydrocotyle Weed Eliminator for Lawns is a dilution of an already approved substance. The full composition of Tui Targeted Hydrocotyle Weed Eliminator for Lawns is detailed in Appendix B.
- 2.3. The applicant is seeking approval to manufacture Tui Targeted Hydrocotyle Weed Eliminator for Lawns in New Zealand.
- 2.4. Tui Targeted Hydrocotyle Weed Eliminator for Lawns is intended to be diluted with water prior to application, which will be by spraying onto weeds. The proposed pack size (50 ml) is sufficient to prepare 5 L of an aqueous ready-to-use solution for 50 m<sup>2</sup> of lawn.

## 3. Process and consultation

- 3.1. The application was lodged pursuant to section 28A of the Act and I am satisfied that it contained sufficient information for the staff of the EPA ("the staff") to undertake an assessment of the substance.
- 3.2. The Ministry of Business, Innovation and Employment (Labour Group), the Ministry for Primary Industries (Agricultural Compounds and Veterinary Medicines Group), the Ministry of Health and the Department of Conservation were advised of the application on 2 December 2013 and invited to comment on it by 6 December 2013. No comments were received.

## 4. Identity of reference substance

- 4.1. The applicant identified a reference substance with which they consider Tui Targeted Hydrocotyle Weed Eliminator for Lawns may be compared.
- 4.1. The staff have advised me that the reference substance suggested by the applicant is not eligible for comparison with Tui Targeted Hydrocotyle Weed Eliminator for Lawns because of the different use pattern (agricultural instead of domestic). The staff have identified a more appropriate reference substance which is identified in Appendix C.
- 4.2. Tui Targeted Hydrocotyle Weed Eliminator for Lawns and the reference substance are both in liquid form and contain the active ingredient triclopyr as the butoxyethyl ester, and other components. Because Tui Targeted Hydrocotyle Weed Eliminator for Lawns is a dilution of an approved substance, the concentrations of the active ingredient and other components, are

lower in Tui Targeted Hydrocotyle Weed Eliminator for Lawns than in the previously approved substance.

## 5 Hazardous properties

- 5.1 The staff determined the hazard profile of Tui Targeted Hydrocotyle Weed Eliminator for Lawns based on the information provided by the applicant and other available information. The hazard classifications for Tui Targeted Hydrocotyle Weed Eliminator for Lawns are set out in Table 1 for comparison against the reference substance.

**Table 1: A comparison of the hazard classifications of Tui Targeted Hydrocotyle Weed Eliminator for Lawns and the reference substance**

Hazard Endpoint	Tui Targeted Hydrocotyle Weed Eliminator for Lawns	Reference Substance
Acute toxicity (oral)	6.1E	6.1C
Skin irritancy	-	6.3B
Eye irritancy	6.4A	6.4A
Contact sensitisation	6.5B	6.5B
Target organ or systemic toxicity	6.9B	6.9B
Aquatic ecotoxicity	9.1A	9.1A
Soil ecotoxicity	9.2A	9.2A
Terrestrial vertebrate ecotoxicity	-	9.3C

- 5.1 The staff have advised me that Tui Targeted Hydrocotyle Weed Eliminator for Lawns has a reduced hazard profile compared to the reference substance in that it has not been classified as a 6.3B (skin irritant) or a 9.3C (soil ecotoxicant), and has a reduced 6.1 (acute toxicity) classification. This is because the reference substance contains hazardous components that are not present in Tui Targeted Hydrocotyle Weed Eliminator for Lawns.

## 6 Meeting the criteria for rapid assessment under section 28A(2)(c) of the Act

- 6.1 The criteria for rapid assessment under section 28A(2)(c) of the Act is that the EPA is satisfied that Tui Targeted Hydrocotyle Weed Eliminator for Lawns has been formulated so that one or more of its hazardous properties has a lesser degree of hazard than a substance that has been approved.

- 6.2 The staff have advised me that there are otherwise no substantial differences in the physical forms, lifecycles, uses and purposes between Tui Targeted Hydrocotyle Weed Eliminator for Lawns and the reference substance.
- 6.3 I consider that there are no other matters which would prevent this application for Tui Targeted Hydrocotyle Weed Eliminator for Lawns from being approved under section 28A of the Act.
- 6.4 Based on the comparison and assessment detailed above, I consider that Tui Targeted Hydrocotyle Weed Eliminator for Lawns meets the criteria for rapid assessment.

## 7 Risk Assessment

- 7.1 The risks associated with Tui Targeted Hydrocotyle Weed Eliminator for Lawns include: acute toxicity, eye irritancy, the potential for contact sensitisation, target organ or systemic toxicity and risks to aquatic and terrestrial environments. These risks are less than those posed by the reference substance.
- 7.2 Tui Targeted Hydrocotyle Weed Eliminator for Lawns and the reference substance are both intended for home use as herbicides.
- 7.3 As Tui Targeted Hydrocotyle Weed Eliminator for Lawns has a reduced hazard profile compared to the reference substance and is used in a similar manner, I consider that it will pose a lower level of risk to human health and the environment.
- 7.4 I have been advised by the staff that the hazard profile of Tui Targeted Hydrocotyle Weed Eliminator for Lawns has the potential for risk to the relationship of Māori with the environment. However, based on the reduced hazard profile in comparison with the already approved reference substance, and on the information provided, including the use patterns and compliance with the controls outlined in this decision, I consider that these risks will be negligible. In addition, there is no evidence to suggest that the controlled use of the product will breach the principles of the Treaty of Waitangi.
- 7.5 A set of controls was applied to the reference substance when it was approved under the Act. Tui Targeted Hydrocotyle Weed Eliminator for Lawns and the reference substance have similar use patterns; therefore, in order to mitigate its risks, most of the controls assigned to the reference substance will be applicable to the proposed substance, except for those controls triggered solely by the skin irritancy and terrestrial vertebrate ecotoxicity, and the higher acute toxicity classifications of the reference.

## 8 Controls

- 8.1 Taking into account the modifications, additions and deletions of controls applied to the reference substance under section 77 and section 77A of the Act, the following modifications, additions and deletions are recommended for Tui Targeted Hydrocotyle Weed Eliminator for Lawns:

**Table 2: Setting exposure limits**

Control	Comment
T1	This control relates to limiting exposure to toxic substances through the setting of TEL, ADE and PDE values. Tolerable Exposure Limit (TEL) values can be set to control hazardous substances entering the environment in quantities sufficient to present a risk to people. No TEL values have been set for any component of Tui Targeted Hydrocotyle Weed Eliminator for Lawns at this time as the level of risk to bystanders is considered to be negligible
T2	Control T2 relates to controlling exposure in places of work through the setting of Workplace Exposure Standard (WES) values. The EPA typically adopts WES values listed in the MBIE Workplace Exposure Standards document (effective from February 2013):  <a href="http://www.business.govt.nz/healthandsafetygroup/information-guidance/all-guidance-items/workplace-exposure-standards-and-biological-exposure-indices/workplace-exposure-standards-and-biological-indices-2013.pdf">http://www.business.govt.nz/healthandsafetygroup/information-guidance/all-guidance-items/workplace-exposure-standards-and-biological-exposure-indices/workplace-exposure-standards-and-biological-indices-2013.pdf</a>  The staff note that no WES values have been set for any component of Tui Targeted Hydrocotyle Weed Eliminator for Lawns by the MBIE, therefore no WES values are applied to any component of Tui Targeted Hydrocotyle Weed Eliminator for Lawns at this time
E1	This control relates to the setting of Environmental Exposure Limits (EELs) to control hazardous substances entering the environment in quantities sufficient to present a risk to the environment. EEL values have not been proposed for any component of Tui Targeted Hydrocotyle Weed Eliminator for Lawns at this time as the level of risk to the environment is considered to be negligible. The default EEL values have therefore been deleted
E2	This control relates to restrictions on use of substances in application areas. The default controls require the EPA to set an application rate for a class 9 substance that is to be sprayed on an area of land (or air or water) and for which an EEL has been set. As no EEL has been proposed for Tui Targeted Hydrocotyle Weed Eliminator for Lawns, a maximum application rate is not set at this time

**Table 3: Variation and deletion of controls**

Control	Comment
T7	Control T7 relates to restrictions on the carriage of toxic or corrosive substances on passenger service vehicles. The default controls include restrictions on the carriage of toxic or corrosive substances on passenger service vehicles (buses, trains etc.). The existing maximum quantities of class 6.5B substances have been reviewed and an increased maximum quantity of 1 L (3 kg for solids) has been recommended for a 6.5 hazard classification, to ensure continued carriage of products available in retail outlets

Control	Comment
	on public transport vehicles. These restrictions do not apply to transport of the substances within private vehicles
E7	<p>The default controls include requirements for ecotoxic substances to be under the control of an approved handler. The staff have advised me that because this control is triggered solely by virtue of the ecotoxicity of Tui Targeted Hydrocotyle Weed Eliminator for Lawns, it is considered that this control can be modified so as to apply only when the substance is applied in a wide dispersive manner (e.g. when sprayed on large areas such as crops) or by a commercial contractor. Accordingly, the following control has been substituted for Regulation 9(1) of the Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001:</p> <p>(1) Tui Targeted Hydrocotyle Weed Eliminator for Lawns must be under the personal control of an approved handler when the substance is–</p> <p>(a) applied in a wide dispersive manner<sup>2</sup>; or</p> <p>(b) used by a commercial contractor</p>
TR1	The default controls also include the requirements for certain substances to be tracked. With respect to Tui Targeted Hydrocotyle Weed Eliminator for Lawns, the tracking requirement has been triggered only by virtue of its ecotoxicity. It is considered that any risks that may arise during its lifecycle are adequately managed through other controls such as approved handler, packaging, labelling and emergency management requirements. Thus, this control has been deleted
EM12	The default controls include requirements for secondary containment of pooling substances. It is considered that the risks associated with the containment of substances which are not class 1 to 5 substances (i.e. do not ignite or explode) are different to those associated with class 1 to 5 substances. Consequently the secondary containment requirements can be reduced. It is considered that these reduced secondary containment measures are adequate to manage the risks of a spillage of Tui Targeted Hydrocotyle Weed Eliminator for Lawns as this substance does not ignite or explode. Therefore, the proposed variation is more cost-effective in terms of managing the risks of the substance

**Table 4: Additional controls**

Control	Comment
Water	<p>The staff note that the environmental risk assessment indicates that restrictions on use are necessary to mitigate the risk of death or adverse effects that Tui Targeted Hydrocotyle Weed Eliminator for Lawns presents to the aquatic environment. Accordingly, it is considered that the application of controls addressing these risks will be more effective than the default controls in terms of their effects on the management, use and risks of the substance. Consequently, the following additional control is applied to Tui Targeted Hydrocotyle Weed Eliminator for Lawns to restrict the level of risk to the aquatic environment:</p> <p><i>Tui Targeted Hydrocotyle Weed Eliminator for Lawns must not be applied into, onto or over water<sup>3</sup></i></p>

<sup>2</sup> 'wide dispersive' use refers to activities which deliver uncontrolled exposure - also refer to: <http://www.epa.govt.nz/Publications/ER-IS-33-2.pdf>

Schedule 8	The staff note that the specified controls do not address the risks associated with storage or use of the substances within stationary container systems (e.g. tanks). These risks include the failure of primary containment resulting in a large spill of the substance into the environment. In addition, the default controls do not allow for dispensation where it is unnecessary for any pipework associated with the stationary container systems to have secondary containment. Accordingly, the application of controls addressing these risks are considered more effective than the specified default controls in terms of their effect on the management, use and risks of the substance
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- 8.2 The additions and modifications to the default controls for Tui Targeted Hydrocotyle Weed Eliminator for Lawns, as described above, have been incorporated into the list of controls for the substance provided in Appendix A.

## 9 Environmental user charges

- 9.1 The staff have advised me that applying controls on Tui Targeted Hydrocotyle Weed Eliminator for Lawns is an effective means of managing risks associated with this substance. Therefore, it is not considered necessary to apply environmental user charges to this substance as an alternative or additional means of achieving effective risk management. Accordingly, no report has been made to the Minister for the Environment in accordance with section 96 of the Act.

## 10 Decision

- 10.1 Pursuant to section 28A of the Act, I have considered this application to manufacture a hazardous substance for release made under section 28 of the Act.
- 10.2 Having considered the staff advice, composition, hazardous properties and use of Tui Targeted Hydrocotyle Weed Eliminator for Lawns, I am satisfied that it meets the criteria for rapid assessment under section 28A(2)(c) as it has one or more hazardous properties with a lesser degree of hazard than a substance that has already been approved under the Act.
- 10.3 I am satisfied with the hazard classifications identified by the staff in Table 1 and confer them accordingly on Tui Targeted Hydrocotyle Weed Eliminator for Lawns.
- 10.4 As the risks posed by Tui Targeted Hydrocotyle Weed Eliminator for Lawns are less than those of the reference substance, I consider that applying the same suite of controls to Tui Targeted Hydrocotyle Weed Eliminator for Lawns, with the variations proposed in Section 8 of this decision, will ensure adequate management of the adverse effects of Tui Targeted Hydrocotyle Weed Eliminator for Lawns.

<sup>3</sup> where 'water' means water in all its physical forms, whether flowing or not, and whether over or under ground, but does not include water in any form while in a pipe, tank or cistern or water used in the dilution of the substance prior to application

10.5 In this consideration, I have also applied the following clauses of the Hazardous Substances and New Organisms (Methodology) Order 1998 (“the Methodology”):

- clause 9 – equivalent of sections 5, 6 and 8;
- clause 12 – risk assessment;
- clause 21 – the decision accords with the requirements of the Act and regulations;
- clause 24 – the use of recognised risk identification, assessment, evaluation and management techniques;
- clause 25 – the evaluation of risks; and
- clause 35 – the costs and benefits of varying the default controls.

10.6 The application to manufacture the hazardous substance, Tui Targeted Hydrocotyle Weed Eliminator for Lawns, for use as a herbicide is thus approved with controls as detailed in Appendix A. I am also satisfied that, as the importation of Tui Targeted Hydrocotyle Weed Eliminator for Lawns would not impose any additional risks over the manufacture of the substance, this approval should apply to both importation and manufacture of Tui Targeted Hydrocotyle Weed Eliminator for Lawns.

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Rob Forlong

Date:

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**Chief Executive, EPA**

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## Appendix A: Controls applying to Tui Targeted Hydrocotyle Weed Eliminator for Lawns

The controls for this substance apply for the indefinite duration of the approval of this substance.

Please refer to the Hazardous Substances Regulations<sup>4</sup> for the requirements prescribed for each control and the modifications listed as set out in Section 8 of this document.

**Table 1: Controls for Tui Targeted Hydrocotyle Weed Eliminator for Lawns – codes, regulations and variations**

### Hazardous Substances (Classes 6, 8, and 9 Controls) Regulations 2001

Code	Regulation	Description	Variation
T1	11 – 27	Limiting exposure to toxic substances through the setting of TELs	No TEL values are set for any component of Tui Targeted Hydrocotyle Weed Eliminator for Lawns at this time
T2	29, 30	Controlling exposure in places of work through the setting of WESs	No WES values are set for any component of Tui Targeted Hydrocotyle Weed Eliminator for Lawns at this time
T4	7	Requirements for equipment used to handle substances	
T5	8	Requirements for protective clothing and equipment	
T7	10	Restrictions on the carriage of toxic or corrosive substances on passenger service vehicles	The maximum quantity of this substance that can be carried on a passenger service vehicle is 1.0 L per package
E1	32 – 45	Limiting exposure to ecotoxic substances through the setting of EEL values	No EEL values are set at this time and the default EEL values are deleted
E2	46 – 48	Restrictions on use of substances in application areas	No maximum application rate has been set for Tui Targeted Hydrocotyle Weed Eliminator for Lawns at this time
E5	5(2), 6	Requirements for keeping records of use	
E6	7	Requirements for equipment used to handle substances	
E7	9	Approved handler/security requirements for certain ecotoxic substances	The following control is substituted for Reg 9(1) of the Hazardous Substances (Classes 6,8 and 9 Controls) Regulations 2001: <i>(1) Tui Targeted Hydrocotyle Weed</i>

<sup>4</sup> The regulations can be found on the New Zealand Legislation website; <http://www.legislation.co.nz>

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Code	Regulation	Description	Variation
			<p><i>Eliminator for Lawns must be under the personal control of an approved handler when the substance is:</i></p> <p><i>(a) applied in a wide dispersive<sup>5</sup> manner; or</i></p> <p><i>(b) used by a commercial contractor</i></p>

### Hazardous Substances (Identification) Regulations 2001

Code	Regulation	Description	Variation
I1	6, 7, 32 – 35, 36(1) – (7)	Identification requirements, duties of persons in charge, accessibility, comprehensibility, clarity and durability	
I3	9	Priority identifiers for ecotoxic substances	
I8	14	Priority identifiers for toxic substances	
I9	18	Secondary identifiers for all hazardous substances	
I11	20	Secondary identifiers for ecotoxic substances	
I16	25	Secondary identifiers for toxic substances	
I17	26	Use of generic names	
I18	27	Requirements for using concentration ranges	
I19	29 – 31	Additional information requirements, including situations where substances are in multiple packaging	
I21	37 – 39, 47 – 50	General documentation requirements	
I23	41	Specific documentation requirements for ecotoxic substances	
I28	46	Specific documentation requirements for toxic substances	

<sup>5</sup> 'wide dispersive' use refers to activities which deliver uncontrolled exposure - also refer to: <http://www.epa.govt.nz/Publications/ER-IS-33-2.pdf>

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Code	Regulation	Description	Variation
I29	51, 52	Signage requirements	
I30	53	Advertising corrosive and toxic substances	

### Hazardous Substances (Packaging) Regulations 2001

Code	Regulation	Description	Variation
P1	5, 6, 7(1), 8	General packaging requirements	
P3	9	Criteria that allow substances to be packaged to a standard not meeting Packing Group I, II or III criteria	
P13	19	Packaging requirements for toxic substances	
P15	21	Packaging requirements for ecotoxic substances	
PG3	Schedule 3	Packaging requirements equivalent to UN Packing Group III	
PS4	Schedule 4	Packaging requirements as specified in Schedule 4	

### Hazardous Substances (Disposal) Regulations 2001

Code	Regulation	Description	Variation
D4	8	Disposal requirements for toxic and corrosive substances	
D5	9	Disposal requirements for ecotoxic substances	
D6	10	Disposal requirements for packages	
D7	11, 12	Information requirements for manufacturers, importers and suppliers, and persons in charge	
D8	13, 14	Documentation requirements for manufacturers, importers and suppliers, and persons in charge	

### Hazardous Substances (Emergency Management) Regulations 2001

Code	Regulation	Description	Variation
EM1	6, 7, 9 – 11	Level 1 information requirements for suppliers and persons in charge	

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Code	Regulation	Description	Variation
EM6	8(e)	Information requirements for toxic substances	
EM7	8(f)	Information requirements for ecotoxic substances	
EM8	12 – 16, 18 – 20	Level 2 information requirements for suppliers and persons in charge	
EM11	25 – 34	Level 3 emergency management requirements: duties of person in charge, emergency response plans	
EM12	35 – 41	Level 3 emergency management requirements: secondary containment	<p>The following subclauses are added after subclause (3) of regulation 36:</p> <p>(4) <i>For the purposes of this regulation, and regulations 37 to 40, where this substance is contained in pipework that is installed and operated so as to manage any loss of containment in the pipework it—</i></p> <p>(a) <i>is not to be taken into account in determining whether a place is required to have a secondary containment system; and</i></p> <p>(b) <i>is not required to be located in a secondary containment system.</i></p> <p>(5) <i>In this clause, pipework—</i></p> <p>(a) <i>means piping that—</i></p> <p>(i) <i>is connected to a stationary container; and</i></p> <p>(ii) <i>is used to transfer a hazardous substance into or out of the stationary container; and</i></p> <p>(b) <i>includes a process pipeline or a transfer line.</i></p> <p>The following subclauses are added after subclause (3) of regulation 37 (control EM12) to take into account any risk of adverse effects posed by pooling hazardous substances:</p> <p>(2) <i>If pooling substances which do not have class 1 to 5 hazard classifications are held in a place</i></p>

Code	Regulation	Description	Variation
			<p><i>above ground in containers each of which has a capacity of 60 litres or less—</i></p> <p><i>(a) if the place's total pooling potential is less than 20,000 litres, the secondary containment system must have a capacity of at least 25% of that total pooling potential:</i></p> <p><i>(b) if the place's total pooling potential is 20,000 litres or more, the secondary containment system must have a capacity of the greater of—</i></p> <p><i>(i) 5% of the total pooling potential; or</i></p> <p><i>(ii) 5,000 litres.</i></p> <p><i>(3) Pooling substances to which subclause (2) applies must be segregated where appropriate to ensure that leakage of one substance may not adversely affect the container of another substance.</i></p> <p>The following subclauses are added after subclause (3) of regulation 38 (control EM12) to take into account any risk of adverse effects posed by pooling hazardous substances:</p> <p><i>(2) If pooling substances which do not have class 1 to 5 hazard classifications are held in a place above ground in containers 1 or more of which have a capacity of more than 60 litres but none of which have a capacity of more than 450 litres—</i></p> <p><i>(a) if the place's total pooling potential is less than 20,000 litres, the secondary containment system must have a capacity of either 25% of that total pooling potential or 110% of the capacity of the largest container,</i></p>

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Code	Regulation	Description	Variation
			<p><i>whichever is the greater:</i></p> <p>(b) <i>if the place's total pooling potential is 20,000 litres or more, the secondary containment system must have a capacity of the greater of—</i></p> <p>(i) <i>5% of the total pooling potential; or</i></p> <p>(ii) <i>5,000 litres</i></p> <p>(3) <i>Pooling substances to which subclause (2) applies must be segregated where appropriate to ensure that the leakage of one substance may not adversely affect the container of another substance</i></p>
EM13	42	Level 3 emergency management requirements: signage	

#### Hazardous Substances (Personnel Qualifications) Regulations 2004

Code	Regulation	Description	Variation
AH 1	4 – 6	Approved Handler requirements (including test certificate and qualification requirements)	Refer to control E7

#### Hazardous Substances (Tank Wagon and Transportable Containers) Regulations 2004

Code	Regulation	Description	Variation
Tank Wagon	4 to 43 as applicable	Controls relating to tank wagons and transportable containers.	

#### Additional controls

Code	Regulation	Description
Water	Section 77A	The substance must not be applied into, onto or over water
Stationary Container Systems	Schedule 8	This schedule prescribes the controls for stationary container systems. The requirements of this schedule are detailed in the consolidated version of the Hazardous Substances (Dangerous Goods and Scheduled Toxic Substances) Transfer Notice 2004